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10/526,093	02/23/2005	Pierre Dreyer	HF/15-22727A/PCT	6625
324	7590	06/02/2009	EXAMINER	
JoAnn Villamizar			DELCOTTO, GREGORY R	
Ciba Corporation/Patent Department				
540 White Plains Road			ART UNIT	
P.O. Box 2005			PAPER NUMBER	
Tarrytown, NY 10591			1796	
			NOTIFICATION DATE	DELIVERY MODE
			06/02/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/526,093

**Applicant(s)**

DREYER ET AL.

**Examiner**

Gregory R. Del Cotto

**Art Unit**

1796

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1, 2, 4, 9, 14, 16, 24, 25, 28, 30, 31, 33, 35 and 40-49 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 9, 14, 16, 24, 25, 28, 30, 31, 33, 35 and 40-49 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Claims 1, 2, 4, 9, 14, 16, 24, 25, 28, 30, 31, 33, 35, and 40-49 are pending. Claims 3, 5-8, 10-13, 15, 17-23, 26, 27, 29, 32, 34, and 36-39 have been canceled. Note that, Applicant's amendments and arguments filed 1/28/09 have been entered.

### **Objections/Rejections Withdrawn**

The following objections/rejections set forth in the Office action mailed 9/26/08 have been withdrawn:

None.

### ***Priority***

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation

under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1, 2, 4, 9, 14, 16, 24, 25, 28, 30, 31, 33, 35, and 40-49 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kvita et al (US 6,291,412) in view of Willey et al (US 6,407,049) or Kitko et al (US 2003/0232734).

Kvita et al teach water-soluble granules of phthalocyanine compounds comprising from 2 to 50% by weight of a water-soluble phthalocyanine compound, from 10 to 95% by weight of an anionic dispersing agent, from 0 to 25% by weight of a water-soluble organic polymer, from 0 to 10% by weight of a further additive, and from 3 to 15% by weight of water. The granules are suitable especially as additives to washing agents for textile materials. See Abstract. Note that, Kvita et al teach phthalocyanine compounds having the same formula as recited by the instant claims. See column 1, line 40 to column 4, line 69. Suitable anionic dispersing agents include the condensation products of aromatic sulfonic acids and formaldehyde, etc. See column 10, line 50 to column 11, line 20. Suitable water-soluble polymers include gelatin, polyacrylates, etc. Additional agents may also be used such as wetting agents, dyes, pigments, etc., in amounts from 0 to 10% by weight. The granules are produced, for example, in the following manner: first of all, an aqueous solution of the phthalocyanine dye is prepared, the anionic dispersing agent and, if desired, further additives are added

thereto, and the mixture is stirred, where appropriate with heating, until a homogeneous solution is obtained. See column 11, line 30 to column 12, line 15.

Additionally, Kvita et al teach washing agent formulations containing 5 to 70% of an anionic surfactant and/or of a nonionic surfactant, from 5 to 50% of a builder substance, from 1 to 12% of a peroxide, and from 0.01 to 1% phthalocyanine granules. See column 13, lines 1-25.

Kvita et al do not teach phthalocyanine granules containing an inorganic salt and/or a low molecular weight organic acid or salt thereof or granules containing a phthalocyanine compound, an anionic dispersing agent, an inorganic salt and/or a low molecular weight organic acid or salt thereof, water, and the other requisite components of the composition in the specific amounts as recited by the instant claims.

Willey et al teach photochemical singlet oxygen generators having enhanced fabric substantivity, said photochemical singlet oxygen generators useful as photobleaches in laundry detergent compositions. See Abstract. Suitable photosensitizers include phthalocyanines, etc. See column 5, line 5 to column 6, line 69. The photosensitizers may be used in laundry detergent compositions containing a deterative surfactant, a photosensitizer, and the balance adjunct ingredients. The laundry detergent compositions may be liquid, granular, etc. See column 25, line 45 to column 26, line 13. Inert salts (filler salts) may be used in the compositions and include any water-soluble inorganic or organic salt or mixtures of such salts which do not destabilize any surfactant present. Examples of suitable salts include alkali metal

sulfates, borates, carbonates, citrates, etc., which may be used in amounts from 10 to 40%. See column 28, line 50 to column 29, line 9.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an alkali metal carbonate, sulfate, or citrate in the granule taught by Kvita et al, with a reasonable expectation of success, because Willey et al teach the use of alkali metal carbonates, sulfates, or citrates as filler salt materials in a similar granular composition and further, filler salts are conventionally used in granular compositions to provide increased substance and enhanced solubility to the granule and are notoriously well-known to those of ordinary skill in the art.

Kitko et al teach detergent compositions containing bleach catalysts or perfumes. See Abstract. These particles are used in detergent compositions which additionally contain adjunct components. The adjunct materials are present in amounts from 80% by weight to 99.9% by weight and include fillers, soil suspension agents, etc. See para. 80. Suitable filler salts include alkali metal carbonates, silicates, sulphates, etc., and are used in amounts from 5% to 60% by weight. See para. 94. Suitable soil suspending agents include polymers derived from acrylic acid (polyacrylic acid), etc.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use an alkali metal carbonate in the granule taught by Kvita et al, with a reasonable expectation of success, because Kitko et al teach the use of alkali metal carbonates as filler salt materials in a similar granular composition and further, filler salts are conventionally used in granular compositions to provide increased

substance and enhanced solubility to the granule and are notoriously well-known to those of ordinary skill in the art.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to use polyacrylic acid in the granule taught by Kvita et al, with a reasonable expectation of success, because Kitko et al teach that the use of polyacrylic acid in a similar granular composition provides soil suspension properties to the granule and further, it would be desirable for one of ordinary skill in the art to provide the granules of Kvita et al with soil suspension properties to aid in cleaning laundry and textiles.

It would have been obvious to one of ordinary skill in the art, at the time the invention was made, to formulate granules containing a phthalocyanine compound, an anionic dispersing agent, an inorganic salt and/or a low molecular weight organic acid or salt thereof, water, and the other requisite components of the composition in the specific amounts as recited by the instant claims and use these granules in further detergent compositions, with a reasonable expectation of success, because the broad teachings of Kvita et al in combination with Willey et al or Kitko et al suggest granules containing a phthalocyanine compound, an anionic dispersing agent, an inorganic salt and/or a low molecular weight organic acid or salt thereof, water, and the other requisite components of the composition in the specific amounts as recited by the instant claims and the use these granules in further detergent compositions.

***Response to Arguments***

With respect to the rejection of the instant claims under 35 USC 103(a) using Kvita et al in combination with Willey et al or Kitko et al, Applicant once again states that one of ordinary skill in the art would not have arrived at the claimed invention from the cited combination of references since the disclosures of Willey and Kitko regarding inorganic salts and organic salts are very generic. Additionally, Applicant states that there is no clear teaching or motivation in Willey et al or Kitko et al to use a filler salt for enhancing solubility of the granules and the Examiner's position appears to be based in hindsight. Furthermore, Applicant reiterates that a Declaration has been filed under 37 CFR 1.132 which shows the unexpected and superior properties of the claimed invention in comparison to compositions falling outside the scope of the instant claims. Specifically, Applicant states that the Declaration provides evidence showing that compositions falling within the scope of the instant claims have unexpected and superior dissolving properties in water and low solubility in nonionic surfactant which provides greater storage stability in comparison to compositions falling outside the scope of the instant claims. In response, note that, the Examiner maintains, as stated previously, Willey et al and Kitko et al are analogous prior art relative to Kvita et al and that one of ordinary skill in the art clearly would look to the teachings of Willey or Kitko in order to cure the deficiencies of Kvita et al. Willey or Kitko are secondary references relied upon for their teaching of an inorganic salt and/or a low molecular weight organic acid or salt thereof. The Examiner maintains that one of ordinary clearly would have been motivated to use an alkali metal carbonate or citrate in the granule taught by Kvita et al, with a reasonable expectation of success, because Willey et al or Kitko teach the

use of alkali metal carbonates or citrates as filler salt materials in a similar granular composition and further, filler salts are conventionally used in granular compositions to provide increased substance and enhanced solubility to the granule and are notoriously well-known to those of ordinary skill in the art.

While Willey et al or Kitko et al do not specifically teach that the use of filler materials enhance the solubility of solid granule compositions, the Examiner reiterates and takes that position that fillers are conventionally used in all types of solid granule detergent compositions to alter the solubility of the composition based on the desired intended use and one of ordinary skill in the art would be motivated to use such fillers in the solid granule compositions taught by Kvita et al to produce the desired solubility. Further, in response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

With respect to the Declaration filed under 37 CFR 1.132 which was submitted on February 5, 2008, the Examiner maintains, once again, that the Declaration is not sufficient to place the instant claims in condition for allowance. First, the data presented in the 1.132 Declaration is not commensurate in scope with the instant claims. For

example, as stated previously, the instant claims are open to broad amounts of numerous water-soluble phthalocyanine compounds, and numerous anionic dispersing agents, numerous inorganic salts and/or organic acids while the data shows results for only four specific embodiments (Formulations B-E) which is not commensurate in scope with the claimed invention. Additionally, with respect to the data showing low solubility in nonionic surfactant resulting in greater stability, the data (absorbance) of Formulation B, prepared in accordance with the claimed invention, is only marginally better than Formulation A and the Examiner asserts that it is unclear if this data actually rises to the level of an unexpected and superior result. While Applicant states that it was not previously argued that Formulation B is better than A for solubility in a nonionic surfactant but pointed out that B outperforms F in this regard, it was stated in the Declaration that Formulation A was the closest prior art and the Examiner maintains that B is only marginally better than A (closest prior art) which does not allow for an objective determination and conclusion of unexpected and superior results. Further, note that, while Applicant points out that new claims 44-49 have been added to represent the components employed and compared in the Menge Declaration, the Examiner maintains that the data presented is not commensurate in scope with these claims as well. For example, instant claims 44-49 are still open to the broad amounts of components as recited by instant claim 1 while the data shows results for only four specific embodiments (Formulations B-E) containing weight percentages of components which is not commensurate in scope with the claimed invention.

Furthermore, as stated previously, it appears that the data presented in the Declaration filed under 37 CFR 1.132 with respect to the dissolving properties in water shows what one of ordinary skill in the art would reasonable expect from using an inorganic salt and/or low molecular weight organic acid in a granular composition and does not show any unexpected result. For example, the Examiner maintains that Formulations B-E contain sodium sulfate as the inorganic salt and one of ordinary skill in the art would reasonable expect that the use of sodium sulfate in a granular composition would improve the solubility of the granule in water, at least initially, in comparison to a granule containing no sodium sulfate, since sodium sulfate is highly soluble in water, which is what the data shows in the 1.132 Declaration. Thus, the Examiner maintains that the data presented in the Declaration filed under 37 CFR 1.132 is not sufficient to show the unexpected and superior properties of the claimed invention in comparison to compositions falling outside the scope of the instant claims.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory R. Del Cotto whose telephone number is (571) 272-1312. The examiner can normally be reached on Mon. thru Fri. from 8:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gregory R. Del Cotto/  
Primary Examiner, Art Unit 1796

/G. R. D./  
May 25, 2009